

6. **Specific damages, General damages and Costs** of the application.

[2] The grounds of this Application are contained in the accompanying affidavits of the applicants; **Alinaitwe Mwesigwa** and **Muruli Francis** wherein, briefly the grounds are as follows:

1. *That the Electoral Commission advertised for the temporary recruitments to fill up the posts of parish and sub county supervisors on the 22nd day of July, 2019.*
2. *That the Applicants followed the advert, applied and were shortlisted for the interviews whereto the interviews were conducted on the 8th August, 2019 at 3:00am.*
3. *That on the 26th August, 2019, a list of successful candidates from the Office of the Regional Election Officer-Albertine was publicized at the office of the District Registrar/Returning Officer-Kagadi wherein the Applicants were amongst the successful candidates.*
4. *That the Applicants were immediately invited for training on the 29th-30th whereto they started work immediately on the instructions of the Returning Officer, Kagadi district.*
5. *The 3rd Respondent through the office of the District Registrar/Returning Officer herein thereafter required a list of the successful candidates who were employed with Kagadi district Local Government from the Chief Administrative Officer, Kagadi district.*
6. *The Chief Administrative Officer included the names of the Applicants amongst servants working with the Kagadi District Local Government on payroll which allegation is not true.*
7. *That whereas the 1st Applicant has ever served as a parish youth Councilor for Kyenzige Sub County, she had already resigned the*

said position and was not drawing her remuneration from the public consolidated fund.

8. *That the 2nd Applicant was referred to as Primary School teacher attached at Katalemwa Primary School, Nyakarongo Sub County whereas she has never been a teacher and has never acquired any training in teaching.*
9. *That the 3rd Respondent made erroneous findings to terminate the Applicants' contracts and replaced them with the unsuccessful candidates thus the Applicants were aggrieved as they were condemned without a fair hearing, which is a non derogable right.*
10. *That the proceedings by the 2nd and 3rd Respondents were conducted without regard to the principles of natural justice thus made findings that were ultra vires.*
11. *That it is just and equitable that the cause be heard on merit and the orders prayed for be granted.*

Counsel legal representation

- [3] The Applicants were represented by **Mr. Isaac Mwebaza** of **M/s Aequitas Advocates, Kampala** while the Respondents were represented by **Mr. Wettaka** of **Legal Chambers, Electoral Commission, Kampala**. Both Counsel filed their respective written submissions as permitted by court for consideration in the determination of this application.

The Applicants' case

- [4] It is the Applicants' case that following an advert of the 22nd/7/2019 from the Electoral Commission for the temporary recruitment for the posts of Parish and sub county supervisors, the applicants applied, were shortlisted for interviews and were listed as successful candidates

by the Office of the Regional Election Officer-Albertine. The list of the successful candidates was publicized at the Office of the District Registrar/Returning Officer-Kagadi wherein the **1st Applicant** was posted to **Mpamba parish**, Kyenzige Town Council and the **2nd Applicant** was posted to **Nyakarongo Parish**, Nyakorongo Sub County.

- [5] The Applicants aver that they were immediately invited for training on the 29th - 30th of August 2019 and started work on the instructions of the Returning Officer-Kagadi District.
- [6] That later, the 3rd Respondent through the Office of **District Registrar/Returning Officer**, required and requested for a list of the successful candidates who were employed with Kagadi District Local Government from the **Chief Administrative Officer (C.A.O)** Kagadi. The C.A.O forwarded the list that bore the Applicants' names as servants working with the Kagadi District Local Government on payroll, which allegation, the Applicants considered not true as at the time, they were not government employees. That as a result, the 3rd Respondent terminated the Applicants' contracts and replaced them with unsuccessful candidates, an act that aggrieved the applicants as the applicants were condemned without a fair hearing which is a non derogable right.
- [7] The applicants complain that the proceedings that terminated their contracts were conducted without regard to the principles of natural justice, and thus the findings by the 2nd and 3rd Respondents that led to the termination of their contracts were *ultra vires* the Regulations that govern the activities of the Electoral Commission.

The Respondents' case

- [8] It is the Respondents' case on the other hand that the Respondents consulted the **Chief Administrative Officer (C.A.O)** Kagadi District, by way of simply conducting background checks about the applicants before appointment. That the employer (Electoral Commission), reserved the right not to appoint any persons in the said positions and the Applicants have no evidence at all that the Respondents ever appointed any other person (s) for the positions that the Applicants vied for.

The preliminary point of law on non-appearance by the 2nd Respondent

- [9] It is true that the 2nd Respondent despite being duly served with court process did not file any affidavit in reply. Though it is the position of the law that "where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are accepted", **Samwiri Musa Vs Rose Achieng [1978] HCB 297**, such presumption is subject to the Applicant proving his/her case and the facts as put across by the applicant being assailed as inherently true and correct.
- [10] In the instant Application, the Applicants still bear the onus to prove their case as against the opposition of the 1st and 3rd Respondents. Court is therefore in the premises to proceed as if the 2nd Respondent filed a reply.

Counsel submissions

- [11] Counsel for the Respondents submitted that whether a dismissal of an employee is illegal or not, such an issue is a matter of evidence. That in the instant case, the applicants had no employment contracts

executed between them and the 1st Respondent and as result, there cannot be termination without employment.

[12] Counsel for Respondents submitted further that the Applicants have no cause action against the Respondents as the Applicants had no appointment letters to qualify them as employees of the 1st Respondent. Indeed, Counsel for the Applicants conceded that whereas the Applicants do not have appointment letters, the Respondent's decision and action of terminating applicants' contracts could be challenged in a court of law by way of judicial review. Counsel further submitted that **Article 42 of the 1995 Constitution of the Republic of Uganda (as amended)** accords a right to an individual to just and fair treatment in administrative decisions taken against him or her.

[13] Counsel also relied on the authorities of **John Jet Tumwebaze Vs Makerere University Council & 3 Ors, H.C.Civil Application No.353 of 2005, Nazaraili Punjwani Vs Kampala District Land Board & Anor, H.C.C.S No.07 of 2005**, to support his argument that the 1st and 2nd Respondents are public bodies established under the Act and that the 3rd Respondent was acting on powers conferred to her by virtue of her work as the Regional Election Officer-Albertine. That the decision to terminate the contracts of the Applicants was reached without regard to the principles of natural justice by the 1st, 2nd Respondents was because it was requested by the 3rd respondent, a public servant and thus made findings that were *ultra vires* the Regulations that govern such ad hoc activities of the Electoral Commission.

Determination of the Application.

[14] Under **Rule 7A of the Judicature (Judicial Review) (Amendment) Rules, 2019**, the Court in considering an application for judicial review must satisfy itself inter alia:

- 1 a. that the application is amenable for judicial review,
- b. that the aggrieved person has exhausted the existing remedies available within the public body or under the law and;
- c. that the matter involves an administrative public body or official.

A public body within the meaning of **Rule 7 (A) of the Judicature (Judicial Review) (Amendment) Rules, 2019** includes the Government, any Department, Services or under taking of the Government.

[15] In the instant case, it is clear that the 1st and 2nd Respondents, are an **administrative public body and Local Government** established under the **Electoral Commission Act Cap 140** and the **Local Governments Act Cap 243** respectively. It is also undisputed that the 3rd Respondent, the Regional Election Officer-Albert is a public official employed by the 1st Respondent. However, the above **Rule 7A (supra)** also require that the aggrieved person/Applicants ought to exhaust the existing remedies within the public body or under the law before seeking for judicial review. It is trite that Prerogative orders will only issue where there is no alternative remedy. The onus is on the Respondents to show that such alternative remedy existed; **Oil Seeds (U) Ltd Vs Chris Kassami HCMA No.136 of 2008**.

[16] In this case, I do not find any evidence adduced by the Respondents that the applicants before filing this application for judicial review, failed and or refused to resort to or exhaust any available existing remedy. The onus was on the Respondents to show that the Applicants had a remedy they ought to had exhausted but they failed and or ignored to do so before rushing to court.

[17] In **Oyaro John Owiny v Kitgum Municipal Council H.C.M.C. No. 07 of 2018 at page 25**, it was held that,

“Court should be cautious in exercising its jurisdiction so as not to

appear to take over and exercise managerial prerogative at work places. Following the process step by step will reflect fairness on the part of the employer and if an employer acts with due care..., the courts will not intervene”.

- [18] In the instant case, I find that the Respondents’ actions that led to the halting of the Applicants’ services arose as a result of the Respondents conducting background checks about the applicants before they could be appointed to the positions of Parish Supervisors, the position the Applicants had vied for. This is the norm and or procedure followed by most if not all employers, to ascertain whether or not the applicants qualify and are or fit for the jobs/posts applied for. It is within the employer’s discretion to reasonably and in good faith, consider the applicants’ applications or not to consider them for the positions they vied for.
- [19] In the circumstances therefore, this court cannot be seen to intervene or interfere in the exercise of the 1st Respondent/Electoral Commission’s managerial prerogative of appointing applicants to particular positions for proper execution of its mandate as legally required. In my view, considering that the applicants had not been issued with Appointment letters or issued with employment contracts, they cannot challenge the decision by way of Judicial Review, of the 3rd Respondent. They actually have no locus.
- [20] In brief, there is no evidence that the Applicants had secured any employment with the 1st Respondent. The **list of the successful candidates** for the Applicants’ vied positions of Parish supervisors, Kagadi District (**Annexure “B”** to the applicants’ affidavits) and correspondences between the **Chief Administrative Officer**, Kagadi, **District Registrar**, Kagadi and **Regional Election Officer/Albertine**

Region (Annextures “C, D and F”) were not privy to the Applicants and therefore, such could not be invoked by the Applicants either in support of this application or as evidence that they had secured employment. These documents did not amount to appointment letters and or valid employment contracts to the Applicants.

[21] **Lastly**, the Applicants have not presented any evidence whatsoever, that they were in the **first** instance, invited for any training for the job they vied for, and **2ndly**, that they commenced duty for the alleged two months. Indeed, there is no evidence that the 3rd Respondent terminated the Applicants’ employment contracts because there wasn’t any, none existed. It is therefore not clear to court as to how the Applicants arrived at the sought specific damages as their allowance in the absence of any contract of employment that spells out their would be entitlement allowances and or salary. It is therefore, a harsh reality that in the absence of a valid contract of employment providing for terms and conditions of service, the Applicants cannot be seen or heard seeking for any of the reliefs sought.

[22] For the foregoing reasons, this application is found devoid of any merit. The Applicants are not entitled to any of the prerogative reliefs sought. However, since it is apparent that the conduct of the Respondents had created an impression that the Applicants had obtained employment with the 1st Respondent whereas not, this Application will be dismissed with no orders as to costs. The Application is accordingly so dismissed.

Dated, signed and delivered at **Hoima** this **20th** day of **January, 2023**.

Byaruhanga Jesse Ruggyema
JUDGE.